

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE: §
§
REPUBLIC RESOURCES, LLC § CASE NO. 15-52637-cag
§
DEBTOR. § CHAPTER 7

MOTION TO SELL PROPERTY FREE AND CLEAR OF LIENS
TO WISE STAR ENERGY, LLC, AND TO APPROVE COMPROMISE AND
SETTLEMENT AGREEMENT WITH CERTAIN THIRD PARTIES

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO
YOUR INTERESTS.**

**IF NO TIMELY RESPONSE IS FILED WITHIN 21 DAYS FROM THE
DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE
GRANTED WITHOUT A HEARING BEING HELD.**

**A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE
HELD.**

**NOTWITHSTANDING THE ABOVE THE TRUSTEE MAY REQUEST
AN EXPEDITED HEARING ON THIS MOTION.**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Jason R Searcy, Trustee (“Trustee”), and files this his *Motion To Sell Property Free and Clear of Liens to Wise Star Energy, LLC, and to Approve Compromise and Settlement Agreement with Certain Third Parties* (the “Motion”) and would show as follows:

I. Jurisdiction and Venue

1.1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

1.2. This Motion is filed pursuant to Local Bankruptcy Procedure Rule 9014, 11 U.S.C. § 363, 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019.

II. Background

2.1. On October 31, 2015 (the “Petition Date”), Republic Resources, LLC (“Debtor”) filed its Chapter 11 Voluntary Petition. Docket No. 1.

2.2. On April 28, 2016, the United States Trustee filed its *Notice of Elected Trustee* appointing Jason R. Searcy to serve as elected chapter 7 trustee in the above styled and numbered bankruptcy proceeding. (docket no. 258).

2.3. Jason R. Searcy is the duly appointed and serving Chapter 7 Trustee for the above-named Debtor.

III.

3.1. A portion of the Debtor’s estate includes certain oil and gas properties located in Bastrop County, Texas (“Properties”). The term “Properties” hereinafter includes the related leaseholds, wells, rights in production, contract rights, easements, permits, equipment, imbalances, data, warranties of title, and all other rights, title and interest to the Properties. The Properties are more fully described in the attachments to the Purchase Offer, **A, B, C, and D thereto**, more particularly described below and attached hereto as **Exhibit 1**.

IV. Background and Purchase Offer

4.1. The Trustee has been investigating certain assignments made during the ninety-day period prior to the Petition Date by the Debtor to certain third parties (“Participant” and/or “Participants”) of an interest in, to, and under the Properties (“Potential Preference Claims”). A true and correct list of those **Participants** is attached hereto as **Exhibit 2**. Because of this

dispute and the Potential Preference Claims, certain production revenue from the Properties has been held in suspense and not paid to the Participants (“Suspense Funds”). To settle the Potential Preference Claims and determine the disposition of the Suspense Funds, the Debtor, Participants, and potential Buyer, Wise Star Energy, LLC, have come to an Agreement as follows:

4.2. Wise Star Energy, LLC, (“Wise Star”) whose address is 2638 Kerrybrook Court, Suite 102, San Antonio, Texas 78230, has offered to purchase the Properties by virtue of a Purchase and Sale Agreement (the “Purchase Offer”). A true and correct copy of the **Purchase Offer** is attached hereto as **Exhibit 1** and incorporated herein for all purposes. Wise Star Energy, LLC, is a limited liability company with certain members who are also Participants.

4.3. In exchange for accepting the Purchase Offer and transferring the Properties to Wise Star Energy, LLC, the Trustee has agreed to enter into a preference Settlement Agreement (“Settlement Agreement”) with the Participants and waive the right to proceed Potential Preference Claims against the Participants. A true and correct copy of such preference **Settlement Agreement** is attached hereto as **Exhibit 3**. The total consideration for the purchase of the Properties and the settlement of the Potential Preference Claims is \$700,000.00. Each Participant would in turn assign his or her rights to the Suspense Funds to Wise Star. All Suspense Funds not attributable to a listed Participant would be turned over to the Trustee for the benefit of the Estate.

4.4. The Trustee desires to accept the Purchase Offer, and sell the above-described Properties to Wise Star. The sale is proposed to be free and clear of all liens, claims and encumbrances with any valid liens, claims or encumbrances attaching to the sale proceeds. The Trustee believes this offer to be reasonable. To the best of Trustee’s knowledge and belief, the

prospective purchaser, Wise Star Energy, LLC, may not be a disinterested party as defined in 11 U.S.C. § 101(14), due to the status of some of its members being Participants. However, this indirect relationship does not create a conflict with the estate nor otherwise give an advantage.

V. Settlement Agreement with Participants

5.1. Additionally, The Trustee desires to enter into the preference Settlement Agreements with the Participants, and hereby seeks approval pursuant to Local and Bankruptcy Procedure Rule 9019 to enter into such an agreement to settle and compromise all claims, matters, disputes and causes of action against such Participants. Cause exists to support approval of the proposed Agreement between the Parties. Pursuant to Bankruptcy Rule 9019(a), the Court has the discretionary authority to approve a compromise of a controversy. *See Protective Comm. Of Stockholders of TMT Trailer Ferry, Inc. v. Anderson* (In re TMT Trailer Ferry, Inc.), 390 U.S. 414, 424 (1968), on remand, *TMT Trailer Ferry, Inc. v. Kirkland*, 471 F.2d 10 (5th Cir. 1972); *Continental Airlines, Inc. v. Air Line Pilots' Ass'n Int'l*, (In re Continental Airlines, Inc.), 907 F.2d 1500, 1508 (5th Cir. 1990). A Trustee or debtor may compromise claims in the administration of the estate with the approval of the Court, after notice and hearing. See Fed. R. Bankr. P. 9019(a). Whether to approve a compromise is a matter within the sound discretion of the Bankruptcy Court. See *In re Aweco, Inc.*, 725 F.2d 293 (5th Cir. 1984); *American Employers Ins. Co. v. King Resources Co.*, 556 F.2d 471 (10th Cir. 1977).

5.2. Courts typically consider the following factors in determining whether to approve a proposed settlement.

- A. The probability of success in litigation;
- B. The likely difficulties in collection;

- C. The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- D. The paramount interest of the debtor's creditors.

See *In re TMT Trailer Ferry, Inc.*, 390 U.S. at 424-25; *Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp.* (In re Foster Mortgage Corp.), 68 F.3d 914, 917 (5th Cir. 1994); *In re General Homes Corp.*, 181 B.R. 898, 901 (Bankr. S.D. Tex. 1995); *Jones v. Cage* (In re W. J. Services, Inc.), 146 B.R. 190, 191 (S.D. Tex. 1991). This standard balances the risks and benefits associated with pursuing a potential claim, against the costs associated with the proposed settlement.

5.3. The application of these standards to the Settlement Agreement proposed herein provide a basis for approval. The primary goal of relief sought herein is an effective settlement of existing assets of the bankruptcy estate which benefits all creditors. The estate is also spared the expense of litigation and a possible trial against the Participants, the uncertainty of collection, and the uncertainty of success at trial.

5.4. The Trustee and Participants desire to enter into the preference Settlement Agreement and believe that Court approval of the subject agreement is reasonable and equitable and to the best of their belief and information does not prejudice any party in interest.

VI.

WHEREFORE PREMISES CONSIDERED, Trustee prays for an Order of this Court approving the sale of the above-described Properties free and clear of liens, claims and encumbrances to Wise Star Energy, LLC in accordance with the Purchase Offer attached hereto as **Exhibit 1**; and for an Order of this Court authorized Trustee to enter into Preference

Settlement Agreements with all pertinent Participants, in a form similar to **Exhibit 3**, and for and for such other and further relief as is just.

DATED August 24, 2017.

Respectfully submitted,
SEARCY & SEARCY, P.C.

/s/ Callan C. Searcy

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been forwarded via electronic mail, if available, and/or via regular mail, postage prepaid to each interested party shown below; and was served via regular first class mail to each party shown on the attached Master Service List on or before August 24, 2017 by the service agent, Certificateofservice.com.

/s/ Callan C. Searcy

Callan C. Searcy

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